



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

Angelique Howell
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Via Email: angelique.howell@gov.ky

Dear Chief Inspector Howell,

The Human Rights Commission would like to take this opportunity to thank you for your e-mail of 6 July, 2012 in which you invited the Commission to review the:

1. Code C (Visual recorded interviews)
2. Code B (Audio recorded interviews)
3. Code A (Stop & Search)
4. Standard of Appearance policy
5. Interview policy

Please find below the HRC's comments on each of the documents.

CODE A: CODE OF PRACTICE FOR THE EXERCISE BY POLICE OFFICERS OF STATUTORY POWERS TO STOP AND SEARCH PERSONS & VEHICLES

Comments on "Introduction"

1. The right to privacy and respect for personal property are of the Bill of Rights. Powers of entry, search, and seizure should be fully and clearly justified before use as they may significantly interfere with an individual's privacy. Officers should consider if the necessary objectives can be met by less intrusive means.

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2. The power to stop and search constitutes a deprivation of liberty and as such should be compatible with Section 5 of the Bill of Rights. The use of the power must also be compatible with Section 9 (private and family life) and Section 16 (non-discrimination). Therefore, officers' use of the power must be legal, proportionate, and nondiscriminatory.

Comments on "General"

3. Suggestion for edit amendment of subsection 2.7:
The primary purpose of stop and search powers are to enable officers to dispel or confirm **reasonable** suspicions about individuals without exercising a power of arrest. Officers may be required to justify the use or authorisation of such powers, in relation both to individual searches and the overall pattern of their activity in this regard, to their supervisory officers or in court. Any misuse of the powers is likely to be harmful to policing and lead to mistrust of the police. Officers must also be able to explain their actions to the member of the public ~~searched~~ **of whom the search is conducted**.

Comments on "Searches requiring reasonable grounds for suspicion"

4. Any benefits of stop and search need to be carefully weighed against the negative impact on public confidence in the police with respect to the potential for human rights infringements.
5. *Subsection 4.2: "A person's religion cannot be considered as reasonable grounds for suspicion and should never be considered as a reason to stop or stop and search an individual"*.

The HRC understands that the UK PACE Code included this sentence following widespread and arbitrary use of stop and search against members of the Muslim community following 9/11 and the terrorists bombing in London in 2005; however, in a local context the Bill of Rights expressly mentions religion as a protected ground concerning non-discrimination.

6. *Subsection 4.5: "...wear a distinctive item of clothing"...*

It should be bore in mind that this provision will likely lead to group suspicion, which may, although inadvertently, extend beyond specific gang members where the identifying item is in fact more widely adopted as part of a sub-culture not associated with illegal activity. As such potential for infringement of Bill of Rights Section 11 9 (expression) may exist where, although in the interest of public safety, the police process is unjustified, disproportionate to the aim, and unnecessary in a democratic society.

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Comments on “Powers to search in the exercise of a power to search premises”

7. Subsection 5.2:

It is essential that searches in relation to the MOU are conducted in accordance with the law and is reasonably justifiable in a democratic society ; if not, it follows that there will be potential for a violation of BOR Section 9 (private and family life) and Section 5 (liberty).

8. Subsection 5.3:

Searches of this nature should be in the public interest as well as proportionate, legitimate, and necessary. Engaging in such searches raises the real possibility of arbitrarily selecting persons for searches, which should always be avoided.

Comments on “Conduct of searches”

9. Subsection 6.6:

This subsection seems to limit such searches to drugs. A suggestion would be to ensure that *any* intimate search (of bodily orifices) is carried out by a qualified person and must have the authority of at least an Inspector.

Comments on Steps to be taken prior to a search

10. Subsection 7.3:

A suggestion is to add the following sentence at the beginning of the section to reflect the protections set out in the Bill of Rights section 5(3) –
“Once an individual is detained for the purpose of a search, he / she shall be informed promptly, in a language that he or she understands, of the reason for his or her detention. “

CODE B: CODE OF PRACTICE ON AUDIO RECORDING INTERVIEWS WITH SUSPECTS

Comments on “General”

1. Subsection 1.8:

“...a person employed by the Commissioner of Police and under the control and direction of the Commissioner of Police...”

Are persons employed by the Commissioner of Police or Cayman Islands Government (Portfolio of Internal Affairs)?

2. Subsection 3.6:

“clear from the outset there will not be a prosecution.”

The above qualification seems to imply that an audio recording is not required where there is a lack of evidence. Therefore, the qualification begs the question, if there is no evidence

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against a person, why is he or she in police custody and made to comply with any form of interview?

Comments not specific to a section

3. In applying the meaning of “appropriate adult” all reasonable measures should be taken to communicate with the parents or guardian of an arrested or detained minor, even if in combination with representative of the local authority or voluntary organisation whose care the minor may be under, or a social worker of a local authority whose supervision the minor may be under.
4. In applying the meaning of a “person who is mentally disordered or mentally vulnerable” it is suggested to keep ‘relative’ and also include ‘parent’.

Comments on “Juveniles and mentally disordered or otherwise mentally vulnerable people”

5. B16: In applying paragraphs B2, B19, and B21 to interview such persons in the absence of the appropriate adult, officers must ensure that such decisions and subsequent actions are justified, proportionate to the aim, and necessary in the context of all circumstances having been taken into consideration.
6. B17: Interviews of children at their place of education should take place in such a place or room that affords privacy to the individual being interviewed.

Comments on “Notes for Guidance”

7. D: In instances wherein children are arrested at their place of education, parents or guardians (as appropriate) should be informed in addition to the school’s principal or nominee.

Comments on “When a caution must be given”

8. C3: Typographical correction- replace “Article 5 (3) of schedule 2 Cayman Islands Constitution order 2009” with “Article 5(3) of Part 1 of the Cayman Islands Constitution Order 2009.”

Comments on “Interviews in Police stations”

9. D2c(ii): Replace “schedule 2 Cayman Islands Constitution order 2009” with “Part 1 of the Cayman Islands Constitution Order 2009.”

Section 6 of the Bill of Rights (treatment of prisoners) states that “all persons deprived of their liberty (in this section referred to as “prisoners”) have the right to be treated with humanity and with respect for the inherent dignity of the human person;” therefore any action taken in terms of interrupting the rest period may require a fresh rest period to begin.

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Comments on “Interpreters”

10. F4(d): The provision appears to be incomplete when read in context.

Comments on “Questioning – special restrictions”

11. G2: If a person in police detention at a hospital may not be questioned without the agreement of a responsible doctor, can that responsible doctor stop the interview for reasons based on the physical or mental capacity of the person being questioned?

CODE C: CODE OF PRACTICE ON VISUAL RECORDING WITH SOUND OF INTERVIEWS WITH SUSPECTS

No comments at this time.

RECORDING OF SUSPECT INTERVIEWS

Comments on Cover Page:

1. The HRC is not producing guidelines for this document or any other document of the RCIPS; rather, at the request of the RCIPS, the HRC has engaged in a review process, which is not a substitute for legal advice.

Bill of Rights, Freedoms and Responsibilities

This policy ~~has been prepared in accordance with guidelines issued by the Cayman Islands Human Rights Commission and is~~ aims to be compatible with the Cayman Islands Constitution Bill of Rights, Freedoms and Responsibilities and related human rights principles.

Comments on “Introduction”

2. Subsection 1.1:

Typographical correction - The Evidence Law 2010 provides the legal foundation for the recording of interviews with suspects by visual and audio means. Rules of practice in the form of Codes B and C have been drafted by the Commissioner of Police and approved by the Governor in Cabinet. These place legal requirements on the police service governing such interviews and ~~and~~ should be read in conjunction with this policy.

Comments on “Conduct of Recorded Interviews”

3. Subsection 2.6:

Typographical correction – repetitive sentence:

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The DVR visual recorder or CD audio recorder will be switched off and one copy of the DVD/CD will be burnt off as a master copy and sealed before it leaves the presence of the suspect. The detained person will sign this seal. A second copy will be burnt off as the working copy. ~~One of the copies used will be sealed as the master copy in the presence of the detained person and signed by the detained person. The other will be the working copy.~~

Comments on “Records of Interview”

4. Subsection 3.8:

It should be borne in mind by constables that any person who is arrested or detained has the right to remain silent and shall be informed promptly, in a language that he or she understands, of the reason for his or her arrest or detention.

5. Subsection 3.11

Typographical query: ... “Approval for any full transcripts is required from the OIC CIDA.”

Comments on “Copies of visual recorded interviews”

6. Subsection 6.9:

Typographical correction – Copies of visually recorded interview media must be treated as confidential. ~~Copy~~ **Copies** of DVD/VHS tapes must not be released other than in accordance with this policy.

STANDARD OF APPEARANCE & DRESS CODE POLICY

Comments on “Policy Statement”

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The HRC hopes that this feedback assists the Royal Cayman Islands Police Service in its aim to ensure that these policy directives are drafted and implemented in accordance with Part One of the Cayman Islands Constitution Order (2009) – The Bill of Rights, Freedoms, and Responsibilities.

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Should you require any additional information or clarification on the foregoing, please do not hesitate to contact the HRC for further discussion. The HRC reaffirms its desire to examine, once they have been drafted, policies of the RCIPS that carry human rights implications.

Kind regards,



PP. Richard Coles
Chairman
Human Rights Commission

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